
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIA ALEJOS,

Defendant.

ORDER

Case No. 1:07CR63DAK

Defendant, Maria Alejos, has filed a motion for early termination of supervised release. Defendant was sentenced to a four-year term of supervised release to begin at the conclusion of her imprisonment. Defendant was released from federal custody and began her term of supervised release on April 16, 2010. Therefore, her supervised release is currently set to terminate on April 16, 2014.

Pursuant to 18 U.S.C. § 3583(e)(1), after considering the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6), the court may terminate a term of supervised release “at any time after the expiration of one year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.” The factors to be considered in Section 3553(a) are those factors to be considered in imposing a sentence, including “the nature and circumstances of the offense and the history and characteristics of the defendant,” the applicable sentencing guidelines and any

policy statements issued by the Sentencing Commission, and the need for the sentence imposed to promote respect for the law, to provide just punishment, to deter other criminal conduct, and to provide the defendant with needed services. *See* 18 U.S.C. § 3553(a).

Defendant's motion for early termination of supervised release is not supported by her probation officer at this time. In addition, counsel for the United States objects to early termination of supervised release at this time. Defendant has completed substance abuse treatment, and demonstrates that she is accepting responsibility for her mistakes and desiring to move forward. She has maintained employment, despite losing her employment at one job because of personality differences. The court believes that Defendant is a strong candidate for early release. However, the court believes that the issue should be evaluated after she has completed at least half of the supervised release term. Although Defendant is making progress, the motion is premature. Defendant needs more time to demonstrate that she is consistently moving in the right direction. Accordingly, the court denies Defendant's motion for early termination of supervised release at this time. Defendant may move for a consideration of the issue after April of 2012.

DATED this 17th day of November, 2010.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

CATHERINE HERROD, et al.,

Plaintiffs,

v.

METAL POWDER PRODUCTS, et al.,

Defendants.

ORDER

Case No. 1:07cv23

District Judge Clark Waddoups

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Clark Waddoups pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Before the court is Stemco, LP's ("Stemco") motion to enlarge the deadline for expert disclosures,² to which Metal Powder Products ("MPP"), Timpco Inc. ("TI"), and Timpco Industries, Inc. ("TII") moved to join.³ As an initial matter, the court **GRANTS** MPP, TI, and TII's respective motions to join Stemco's motion and memoranda.

Stemco, MPP, TI, and TII (collectively, "Defendants") seek to enlarge the deadline for their expert disclosures by sixty (60) days. Defendants assert that they need additional time to retain expert witnesses to address certain issues raised by Catherine Herrod et al.'s (collectively,

¹ See docket no. 137.

² See docket no. 170.

³ See docket nos. 177, 179, and 185.

“Plaintiffs”) experts that are beyond Defendants’ experts’ qualifications. Defendants contend that the experts with whom their counsel has consulted indicate that they will need additional time to fully evaluate the extensive amount of evidence and testimony provided in order to formulate their opinions and respond to Plaintiffs’ experts. Defendants further argue that a sixty-day extension of time will not prejudice Plaintiffs because they will have an opportunity to submit counter-reports and depose Defendants’ experts in sufficient time to prepare for trial.

In response, Plaintiffs argue that Defendants’ request for additional time is neither reasonable nor justified. Plaintiffs assert that this case has been pending for years and Defendants have been aware of the issues regarding expert testimony for a long time. Plaintiffs state that “the agreed deadlines set forth in the Scheduling Order are interrelated and it is necessary to maintain the existing deadline for [Defendants’] experts to allow this case to progress to trial in an orderly manner.”⁴

While the court understands Plaintiffs’ frustrations with the glacial pace of this litigation, Plaintiffs have failed to demonstrate that they will suffer specific prejudice if the expert deadlines are extended. That said, to preserve the trial date and maintain a five-month period between the dispositive motion deadline and trial per court policy, the court concludes that a sixty-day extension is untenable. Accordingly, the court **GRANTS IN PART AND DENIES IN PART** Defendants’ motion. The deadline for Defendants to disclose expert reports is December 30,

⁴ Docket no. 173 at 4.

2011, and the deadline for filing counter-reports is January 30, 2012. All other dates in the scheduling order remain unchanged.

IT IS SO ORDERED.

DATED this 18th day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge

FILED U.S. DISTRICT COURT

District of Utah

2011 NOV 17 A 9:27
UNITED STATES OF AMERICA)

v. DISTRICT OF UTAH)

Tara Jolene Rust)

DEPUTY CLERK)

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 1:11-cr-000082-002

USM Number: 18259-081

Stephen R. McCaughey

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) Cnt III - Indictment☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18USC§922(j)	Possession of Stolen Firearms		III

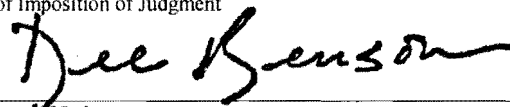
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☒ Count(s) I ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/15/2011

Date of Imposition of Judgment



Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

11/16/2011

Date

DEFENDANT: Tara Jolene Rust
CASE NUMBER: DUTX 1:11-cr-000082-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tara Jolene Rust
CASE NUMBER: DUTX 1:11-cr-000082-002

Judgment—Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tara Jolene Rust
CASE NUMBER: DUTX 1:11-cr-000082-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
2. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, and shall warn any other residents that the premises may be subject to search.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tara Jolene Rust
CASE NUMBER: DUTX 1:11-cr-000082-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

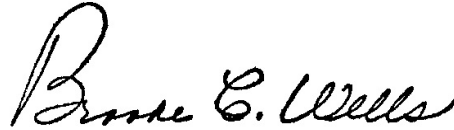
UNITED STATES OF AMERICA,	:	ORDER AUTHORIZING
	:	TEMPORARY RELEASE
Plaintiff,	:	FOR THANKSGIVING
-VS-	:	
ERIK SILVA,	:	Case No. 1:11-CR-096 DB
Defendant.	:	Magistrate Judge Wells

Based upon motion of the defendant, Erik Silva, stipulation of the government and good cause appearing therefore;

IT IS HEREBY ORDERED that Erik Silva may be released from the Geo Group facility on November 24, 2011 for a period of approximately eight hours to enjoy Thanksgiving activities and dinner with his family at the home of his mother, Dora Silva. Mr. Silva and facility personnel shall work coordinate the time for his release from and return to the facility on that day.

IT IS FURTHER ORDERED that all other conditions of release shall remain in effect.

DATED this 18th day of November 2011.

A handwritten signature in cursive script, reading "Brooke C. Wells". The signature is written in black ink and is positioned above a horizontal line.

HONORABLE BROOKE C. WELLS
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

DARWIN BLACK,

Plaintiff,

vs.

**FIRST CHOICE FINANCIAL, LLC; US
BANK HOME MORTGAGE aka US
BANK NATIONAL ASSOCIATION aka
US BANCORP.,**

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 1:11CV6 DAK

This matter is before the court on the U.S. Bank Defendants' Motion to Dismiss. A hearing on the motion was held on August 24, 2011. At the hearing, the U.S. Bank Defendants were represented by Jeffery S. Williams, and Plaintiff Darwin Black was represented by Matthew G. Wadsworth. Before the hearing, the court carefully considered the memoranda and other materials submitted by the parties. Since taking the matter under advisement, the court has further considered the law and facts relating to this motion. Now being fully advised, the court renders the following Memorandum Decision and Order.

On December 9, 2009, Mr. Black borrowed \$376,804.00 from First Choice Financial, LLC and signed a promissory note (the "Note") in connection with the loan. The Note is secured by a Deed of Trust that encumbers Plaintiff's property in Davis County, Utah. Plaintiff used the loan proceeds to refinance a prior loan secured against his residence. The Note and Trust Deed have since been assigned to U.S. Bank, and Plaintiff is in default.

In the instant lawsuit, Plaintiff asserts five causes of action, including two claims based on the Real Estate Settlement Procedure Act (“RESPA”) and three claims based on the Truth in Lending Act (“TILA”). At the hearing on the motion, Plaintiff withdrew his RESPA claims (which are the first and second causes of action), and thus those claims are dismissed. Accordingly, the court will address only the TILA claims, which are characterized in the Amended Complaint as a claim for declaratory relief, violations of TILA and Regulation Z, and negligence. The declaratory judgment and negligence claims are based substantively on Plaintiff’s theory that U.S. Bank violated TILA. While Plaintiff’s request for declaratory judgment may remain, no separate action exists for negligence apart from the alleged TILA violations. Therefore, Plaintiff’s TILA negligence claim (the Fifth Cause of Action) is dismissed.

In the remaining two claims, Plaintiff alleges that U.S. Bank is liable for a host of purported TILA violations for certain undisclosed or improper fees and charges associated with the origination of his loan. Plaintiff seeks both damages and the right of rescission in accordance with a “Notice of Rescission and Offer to Tender” that was allegedly sent to U.S. Bank in September 2010. As discussed below, the court dismisses all Plaintiff’s claims but grants leave to amend his disclosure-related TILA rescission claim if he can allege that he has the ability to tender the loan proceeds.

DISCUSSION

TILA allows for monetary damages “[i]n any action in which it is determined that a

creditor has violated this section, in addition to rescission[,], the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.” 15 U.S.C. § 1635(g). A claim for monetary relief must be brought “within one year from the date of the occurrence of the violation.” 15 U.S.C. § 1640(e).

To the extent Plaintiff has based his alleged TILA violations on Defendant’s failure to make material disclosures, the claim is time-barred. Plaintiff obtained his loan on December 9, 2009, and thus any disclosure-related violation would have occurred on that date. Plaintiff filed the instant lawsuit on January 11, 2011, which is beyond the one-year limitations period.¹

In addition, Plaintiff appears to claim that Defendant’s failure to rescind—after Plaintiff sent a Notice of Rescission—entitles him to monetary damages. Plaintiff is correct that a failure to rescind constitutes a separate violation of TILA. *See, e.g., Tacheney v. Marshall & Ilsley Bank*, No. 10–CV–2067, 2011 WL 1657877, at *5 (D.Minn. Apr. 29, 2011) (“If defendants acted unlawfully in refusing to rescind the Loan, their refusal was an independent TILA violation.” (citing *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1165 (9th Cir.2002); *De Vary v. Countrywide Home Loans, Inc.*, 701 F.Supp.2d 1096, 1103 (D.Minn.2010))). Thus, if Plaintiff was able to prove that he properly rescinded the loan and that Defendants acted unlawfully in refusing to rescind, Plaintiff’s claim for money damages would be timely filed because he filed this action within one year of his alleged Notice of Rescission, which was allegedly sent on September 15, 2010.

Even assuming, however, that Plaintiff had a right to rescind, his Notice of Rescission

¹ Moreover, Plaintiff has not alleged any factual ground (such as fraudulent concealment) that would justify tolling the statute of limitations.

was inadequate for purposes of imposing liability on Defendant for refusing to rescind because Plaintiff did not tender the loan proceeds. Although the court recognizes that the Tenth Circuit has yet to address the issue, *see Smith v. Argent Mortgage Co.*, 331 Fed. Appx. 549, 557 n .5 (10th Cir.2009), this court has previously held in another case that

equity requires that the [plaintiffs] allege their ability to repay the loan amount. The [plaintiffs] have not alleged their ability to repay the loan. Instead, they claim that they satisfied this equitable requirement by alleging their ability and willingness to convey the property to [the defendant] because the property itself constitutes the “loan proceeds.” This novel argument fails. In the transaction between the [plaintiffs] and [the credit union] the loan proceeds are the amount of money that [the credit union] gave the [plaintiffs] in return for a mortgage interest in the [plaintiffs’] house. The [plaintiffs] received money, not a house. Their argument that a borrower can meet the repayment requirement by conveying the property instead of repaying the loan is not supported by case law. Because the [plaintiffs] have not alleged their ability to repay the loan, their rescission claim fails and must be dismissed.²

Sanders v. Ethington, 2010 WL 5252843 (D. Utah Dec. 16, 2010); *see also Jobe v. Argent Mortgage Co.*, 373 Fed. Appx. 260, 262 (3d Cir.2010) (holding that even if the lender violated TILA, rescission was inappropriate because the borrowers were unable to return the money); *Am. Mortgage Network, Inc. v. Shelton*, 486 F.3d 815, 820-21 (4th Cir.2007) (holding that rescission was inappropriate because the borrowers were unable to repay the loan); *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1173 (9th Cir.2003) (holding that a district court did not abuse its discretion in a TILA case when it required the borrower to show her ability to repay the loan proceeds); *Williams v. Homestake Mortg. Co.*, 968 F.2d 1137, 1142 (11th Cir.1992) (holding that the court

² Plaintiff’s counsel in the instant case represented the plaintiff in *Sanders* and has appealed the court’s decision, perhaps giving the Tenth Circuit an opportunity to address the issue.

could impose conditions on rescission, and instructing the district court to take into account whether the borrower could repay the principal).

Here, because counsel for Plaintiff stated at the hearing on this motion that Plaintiff indeed had the ability to repay the loan, and because the court finds that Plaintiff's disclosure-related TILA claim (discussed below) survives this motion, the court will permit Plaintiff to file a Second Amended Complaint, if he is able to allege his ability to repay the loan proceeds.

Having concluded that Plaintiff's TILA disclosure-related damages claim is time-barred and that he is not entitled to damages for Defendant's alleged refusal to rescind, Plaintiff's remaining claims pertain to his alleged right to rescind under TILA. Plaintiff had three days following consummation of the loan transaction to rescind the transaction. 15 U.S.C. § 1635(a). Pursuant to TILA, this three-day period will be extended to three years if the lender fails to deliver to the borrower "all material disclosures" or "two copies of the notice of the right to rescind." 12 C. F. R. § 226.23(a)(3), (b)(1). Here, Plaintiff has alleged that certain material disclosures were not made, and that he therefore has three years from the date of the loan to rescind and his claims were timely filed.³

³ Plaintiff argues in his Memorandum in Opposition that, in addition to failing to make certain material disclosures, the Lender also did not provide him with two signed copies of the Notice of Right to Cancel ("NRC"). He also contends that the court must, at this point, accept this allegation as true.

While Plaintiff is correct that a signature on a document acknowledging receipt "does no more than create a rebuttable presumption of delivery thereof," 15 U.S.C. § 1635(c), there are two problems with his claim pertaining to not receiving two copies of the NRC.

First, there is no such allegation in Plaintiff's Amended Complaint pertaining to not receiving two copies of the NRC. Plaintiff may not raise new claims in his opposition to Defendant's motion to dismiss. *See, e.g., Greenidge v. Allstate Ins. Co.* 446 F.3d 356, 361 (2nd

While Plaintiff has certainly alleged that certain disclosures were not made, Defendant has attached a copy of the Settlement Statement and the Truth in Lending Disclosure for Real Estate Mortgage Loan, which appear to disclose much—if not all—the information about which Plaintiff now complains. To complicate matters, many of Plaintiff’s allegations are unclear or confusing. Because this is a motion to dismiss, and the court must accept Plaintiff’s disclosure-related allegations as true, the court cannot dismiss the disclosure-related TILA claims (the Third and Fourth Causes of Action) at this juncture.⁴ Defendants contend that Plaintiff was required to come forward with additional evidence in light of Defendant’s attachment of the documents in dispute, but it is in the context of a motion for summary judgment that Plaintiff must come

Cir. 2006); 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1183, at 23 n. 9 (3d ed. 2004).

Second, even if this claim were properly before the court, there is no requirement in TILA that a borrower receive two *signed* copies of the NRC; only that the borrow receive two copies. *See* 12 C.F.R. § 226.23(b). Plaintiff did not suggest in his opposition memorandum that he did not receive two copies. Therefore, there does not appear to be any basis for a TILA rescission claim grounded on an alleged failure to provide two copies of the NRC. If Plaintiff inadvertently omitted such an allegation in his Complaint and then mis-spoke in his opposition brief, he may include such an allegation in his Second Amended Complaint, keeping in mind the presumption of receipt created by the signed copy.

⁴ For example, among many other allegations, Plaintiff claims that:

- “the APR was wrong”;
- “[b]ecause the payments are ranged, the APR and Finance Charge are wrong”;
- “Lender . . . failed to include in the itemization of amount financed the dollar amounts for the following fees ”; and
- there was a significant discrepancy in the amount of the “full first payment” as stated by the Original Lender and the amount on the Note and the range listed on the Truth in Lending Disclosure.”

The court must accept such allegations as true for purposes of the instant motion.

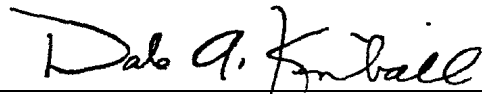
forward with evidence to create a genuine issue of material fact. If Plaintiff files a Second Amended Complaint, Plaintiff is urged to clarify, relative to the documents at issue, what material disclosures were not made or how they were incorrect. If appropriate, Defendant then may file a motion for summary judgment on Plaintiff's remaining claims.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that the U.S. Bank Defendants' Motion to Dismiss [Docket No. 19] is GRANTED in part and DENIED in part. Plaintiff's First, Second, and Fifth Causes of Action are DISMISSED with prejudice. Plaintiff's Fourth and Fifth Causes of Action are dismissed without prejudice, and Plaintiff is granted leave to amend his Complaint as to those two causes of action if he is able to allege that he has the ability to tender the loan proceeds.

DATED this 17th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge

MATTHEW L. CUTLER (Pro Hac Vice)
DOUGLAS A. ROBINSON (Pro Hac Vice)
HARNESS, DICKEY & PIERCE, P.L.C.
7700 Bonhomme, Ste. 400
St. Louis, MO 63105
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mcutler@hdp.com
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FILED
U.S. DISTRICT COURT

2011 NOV 17 A 9:22

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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Attorneys for Plaintiff and Counter-defendant
INTERACTIVE FITNESS HOLDINGS, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

INTERACTIVE FITNESS HOLDINGS, LLC,
a Delaware corporation,

Plaintiff,

v.

ICON HEALTH & FITNESS, INC., a
Delaware corporation,

Defendant,

AND RELATED COUNTERCLAIMS.

Civil Action No. 1:11-CV-00075-DB

**[PROPOSED] ORDER GRANTING
STIPULATION FOR EXTENSION
OF TIME TO RESPOND TO ICON
HEALTH & FITNESS, INC.'S MOTION
TO DISMISS, SEVER, OR STAY
HICKMAN PATENT CLAIM**

Honorable Judge Dee Benson

IT IS HEREBY ORDERED that, pursuant to the parties' stipulation, and good cause appearing therefor, the time for Interactive Fitness Holdings, LLC to respond to ICON Health & Fitness, Inc.'s Motion to Dismiss, Sever, or Stay Hickman Patent Claim (Dkt. No. 26) is extended to November 21, 2011.

DATED this 16 day of Nov

BY THE COURT

By: Dee Benson
Honorable Judge Dee Benson
United States District Court Judge

MATTHEW L. CUTLER (Pro Hac Vice)
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FILED
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DISTRICT OF UTAH
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Attorneys for Plaintiff and Counter-defendant
INTERACTIVE FITNESS HOLDINGS, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

INTERACTIVE FITNESS HOLDINGS, LLC,
a Delaware corporation,

Plaintiff,

v.

ICON HEALTH & FITNESS, INC., a
Delaware corporation,

Defendant,

AND RELATED COUNTERCLAIMS.

Civil Action No. 1:11-CV-00075-DB

~~[Proposed]~~

ORDER REGARDING STIPULATION OF
DISMISSAL WITHOUT PREJUDICE OF
CLAIMS RELATED TO U.S. PATENT NO.
6,808,472

Honorable Judge Dee Benson

The Court, having received and considered the Parties' "Stipulation of Dismissal Without Prejudice of Claims Related to U.S. Patent No. 6,808,472" ("Stipulation"); and good cause appearing therefor, HEREBY ORDERS:

1. Interactive Fitness Holdings, LLC's ("Interactive Fitness") declaratory judgment claim of patent non-infringement as to U.S. Patent No. 6,808,472 ("the '472 patent")—Count II of Interactive Fitness's Complaint for Declaratory Judgment—shall be dismissed without prejudice.

2. ICON Health & Fitness, Inc. ("ICON") shall not seek any relief, including monetary damages, from Interactive Fitness for infringement of the '472 patent for any activities undertaken by Interactive Fitness that occur between the date the parties' Stipulation was filed with the Court and Interactive Fitness's receipt from ICON of written notification both that reexamination proceedings regarding U.S. Patent Nos. 6,059,692 and 6,193,631 have concluded, and that ICON believes that Interactive Fitness infringes the '472 patent. However, this limitation on relief shall not operate to entitle Interactive Fitness to any intervening right or other legal or equitable defenses that Interactive Fitness is not otherwise entitled to with respect to any claim of infringement of the '472 patent.

3. Interactive Fitness does not admit that it is liable for infringement of any valid and enforceable claim of the '472 patent.

4. The Court shall take no action with respect to ICON's "Motion to Dismiss, Sever, or Stay Hickman Patent Claim" (Dkt. No. 26).

5. The parties' claims and counterclaims regarding U.S. Patent No. 6,447,424 are not affected by this Order.

6. Each party is to bear its own costs and attorneys' fees with respect to the '472 patent.

DATED this 16 day of Nov

BY THE COURT

BY: Dee Benson

Honorable Judge Dee Benson
United States District Court Judge

60891665.1
60894066.1

FILED
U.S. DISTRICT COURT

2011 NOV 17 P 2:57

U.S. DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

IN THE MATTER OF ELVA H. HAKES, a
protected person.

**ORDER DENYING PETITIONER
KELSIE STRONG'S *EX PARTE*
REQUEST TO SHORTEN TIME**

Case No. 1:11-cv-100158

Judge Dee Benson

Before the Court is Petitioner Kelsie Strong's ("Petitioner") *Ex Parte* Request to Shorten Time for counsel for Elva H. Hakes to file any objection or opposition to Petitioner's Motion to Remand. Petitioner Kelsie Strong's *ex parte* request is DENIED.

IT IS SO ORDERED.

DATED this 7 day of November, 2011.



Dee Benson
United States District Judge

United States District Court

Northern Division for the District of Utah

FILED
U.S. DISTRICT COURT

2011 NOV 18 P 1:07

DISTRICT OF UTAH

BY:

DEPUTY CLERK

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Jonathan Collier

v.

Utah Transit Authority

Case Number: 1:11-cv-163 CW

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:

☒

GRANTED.

☐

DENIED, for the following reasons:

ENTER this

16

day of

Nov.

, 20 11


Signature of Judicial Officer

Brooke C. Wells, U.S. Magistrate Judge
Name and Title of Judicial Officer

DAVID N. WOLF (6688)
Assistant Utah Attorney General
MARK SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
E-mail: dnwolf@utah.gov

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ANGELO GOMEZ WRIGHT,

Plaintiff,

v.

SCOTT CARVER, et al.

Defendants.

**ORDER OF DISMISSAL WITH
PREJUDICE**

Case No. 2:06-cv-542

Judge Ted Stewart

Magistrate Judge Brooke C. Wells

Based upon the *Stipulated Motion for Dismissal With Prejudice* entered into between Plaintiff Angelo Gomez Wright and Defendants Preston Haun and Evan Schippaaboar, it is hereby ORDERED, ADJUDGED AND DECREED that all claims contained in Plaintiff's Complaint against Defendants Preston Haun and Evan Schippaaboar are dismissed, with prejudice, with the parties to bear their own costs and fees.

DATED this 18th day of November, 2011.

BY THE COURT:



TED STEWART
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM:

/s/ Jacob D. Lyons
JACOB D. LYONS
CALLISTER, NEBEKER & McCULLOUGH
Attorneys for Plaintiff
*(Signed copy of document bearing signature
of Jacob D. Lyons is being maintained in the
office of the Filing Attorney)*

IN THE UNITED STATES FEDERAL DISTRICT COURT
CENTRAL DISTRICT, STATE OF UTAH

SOPHIA STEWART,

Plaintiff,

v.

MICHAEL T. STROLLER, JONATHAN
LUBELL, GARY BROWN and JOHN
DOES I-X, individuals whose identities are
not yet known,

Defendants.

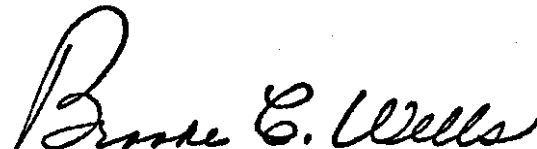
**ORDER DENYING WITHOUT
PREJUDICE MOTION TO
WITHDRAW AS COUNSEL**

Case No.: 2:07-cv-00552

Judge: Waddoups

Counsel for Plaintiff Sophia Stewart seeks to withdraw from this case.¹ An initial pretrial conference is scheduled in this matter for December 7, 2011.² Because that hearing is only approximately 2 weeks away, the court DENIES without prejudice Mr. McBride's motion to withdraw. After the hearing Mr. McBride may renew his motion to withdraw from this case pursuant to DUCivR 83-1.4.

DATED this 18 November 2011.



Brooke C. Wells

United States Magistrate Judge

¹ Docket no. 165.

² As noted by the court on the notice of initial pretrial conference, the court may enter a scheduling order and vacate the hearing if counsel (a) file a stipulated Attorneys Planning Meeting Report and (b) email a Proposed Scheduling Order to jpt@utd.uscourts.gov. See Notice, docket no. 162. If counsel comply with these requirements in a timely manner then the hearing may be unnecessary and Mr. McBride may renew his motion after the pretrial conference is stricken.

Heidi E. C. Leithead (5102) (hleithead@parrbrown.com)
Cheylynn Hayman (9793) (chayman@parrbrown.com)
PARR BROWN GEE & LOVELESS
185 South State Street, Suite 800
Salt Lake City, UT 84111
Telephone: 801-532-7840
Facsimile: 801-532-7750

Attorneys for Defendant
Mission Support, Inc.

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

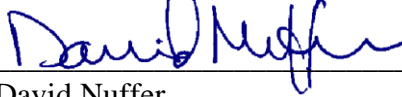
United States of America, ex rel. Jeff Johnson)	
)	ORDER SEALING COURT RECORDS
)	
Plaintiffs,)	
)	
vs.)	
)	
Mission Support, Inc., and John Does 1-10,)	Case No. 2:08cv00877
)	
Defendants.)	Judge Dee Benson

Having considered the parties' Stipulated Motion to Seal Court Records (Docket No. 85),
and good cause appearing therefor,

THE COURT HEREBY ORDERS that the Stipulated Motion is GRANTED and Exhibit 1 to the Declaration of Plaintiff Jeff Johnson [Docket No. 59], and Exhibits 55 and 56 to the Verified Reply to Defendant's Memorandum in Opposition to Relator's Motion to Amend Complaint [Docket No. 68] are hereby immediately sealed and classified as non-public, with access restricted to the Court, the parties, and their counsel.

Dated November 18, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA
v.
Tracy C. McNeil

Judgment in a Criminal Case
(For Revocation of Probation or Supervised Release)

2011 NOV 15 A 9:28
DISTRICT OF UTAH
BY: _____ Case No. DUTX 2:09-cr-000501-001
DEPUTY U.S. MARSHAL USM No. 16357-081
David Shapiro

Defendant's Attorney

THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) 1 and 2 of the term of supervision.
☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	Failed to Notify Change of Residence	08/08/2011
2.	Failed to Submit Truthful and Complete Reports	07/31/2011

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 0547

Defendant's Year of Birth: 1957

City and State of Defendant's Residence:
Kamas, Utah

11/15/2011

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

U.S. District Judge

Name and Title of Judge

11/16/2011

Date

DEFENDANT: Tracy C. McNeil
CASE NUMBER: DUTX 2:09-cr-000501-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
Until space is available at the Residential Reentry Center. (11/21/2011

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tracy C. McNeil

CASE NUMBER: DUTX 2:09-cr-000501-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tracy C. McNeil
CASE NUMBER: DUTX 2:09-cr-000501-001

SPECIAL CONDITIONS OF SUPERVISION

1. All previous conditions are reinstated.
2. The defendant shall reside in a residential reentry center under a Public Law placement for a period of up to 180 days, with release for work, education, medical, religious services, treatment, or other approved release as deemed appropriate by the probation office or residential treatment reentry center.

DEFENDANT: Tracy C. McNeil
CASE NUMBER: DUTX 2:09-cr-000501-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The Court orders that the \$75.00 balance for the special assessment fee and the \$115.00 urinalysis fee ordered on 3/30/2010, for the original offense, be reinstated.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MIDWEST KEY FITNESS, LLC, a
Wisconsin corporation,

Plaintiff,

vs.

NextFIT, INC., f/k/a Wren, Inc.,
a Nevada corporation; NextFITNESS,
INC., a Nevada corporation; TERI
SUNDH, an individual; and JEFF
HAYS, an individual,

Defendants.

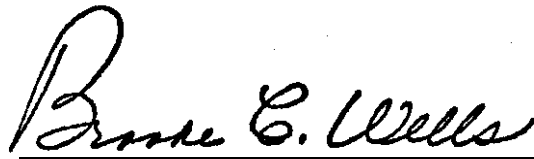
**ORDER GRANTING IN PART *EX*
PARTE APPLICATION FOR ORDER
COMPELLING PRODUCTION OF
DOCUMENTS AND ANSWERS TO
INTERROGATORIES AND TO SET
DATE FOR DEPOSITION**

Case No. 2:09-cv-844 DB

The Court, having considered the Ex Parte Motion of Plaintiff and Judgment Creditor Midwest Key Fitness, LLC, for an Order Compelling Production of Documents and Answers to Interrogatories and to Set a Date for Deposition, hereby GRANTS the Motion and ORDERS:

1. Teri Sundh shall produce all documents and information responsive to MidWest's discovery requests within fifteen (15) days of service of this Order on Sundh;
2. Teri Sundh shall appear for deposition within ten (20) days of service of the documents and information responsive to MidWest's discovery requests to MidWest, at a location and date and time chosen by MidWest (who shall make reasonable efforts to accommodate the preferences of Sundh as to date of deposition); and
3. At this time the court denies MidWest's request that Teri Sundh pay the costs and fees incurred by MidWest in bringing this Motion. MidWest, however, may renew this request if Mr. Sundh fails to comply with this order.

DATED this 18 November 2011.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter "B" is large and loops around the first part of the name. The signature is positioned above a horizontal line.

Brooke C. Wells
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case #: 2:10CR00803 TS
Plaintiff,	:	
vs.	:	ORDER OF FORFEITURE
KRISTIAN MORENO-MARTINEZ,	:	
aka KRISTIAN MOLANO,	:	JUDGE Ted Stewart
Defendant.	:	

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count I of the Superseding Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Kristian Moreno-Martinez, shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922, including but not limited to:

- Llama .45 Caliber Handgun, Serial Number: 07-04-05085-98
- Bushmaster .223 Caliber Rifle, Serial Number: L332425

2. The Court has determined that based on being found guilty of Possession with Intent to Distribute Methamphetamine, the above-named properties is subject to forfeiture, that the defendant had an interest in the properties, and that the government has established the requisite nexus between such properties and such offense;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

3. Pursuant to 18 U.S.C. § 924(d)(1), and Rule 32.2(b)(1), Federal Rules of Criminal Procedure, the above identified property is hereby forfeited to the United States.

4. Upon the entry of this Order, in accordance with Fed. R. Crim. P. 32.2(b)(3), the Attorney General (or a designee) is authorized to seize the properties and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture.

5. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

6. The United States shall publish notice of this Order on its intent to dispose of the property on the Government's internet website, www.forfeiture.gov. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

7. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

8. Pursuant to Fed. R. Crim. P. 32.2(b)(4), this Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment. If no third party files a timely claim, this Order shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2).

9. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

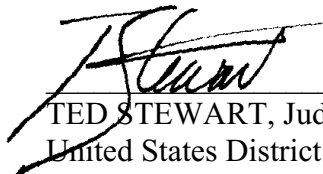
10. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

11. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

12. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 18th day of November, 2011.

BY THE COURT:


TED STEWART, Judge
United States District Court

JOEL J. KITTRELL [9071]
RICHARDS BRANDT MILLER NELSON
Attorneys for Defendant
Wells Fargo Center, 15th Floor
299 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506
Email: Joel-Kittrell@rbmn.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOUGLAS STEWART,

Defendant.

ORDER TO ALLOW
DEFENDANT TO TRAVEL

:

:

Case No. 2:10-CR-01004 CW

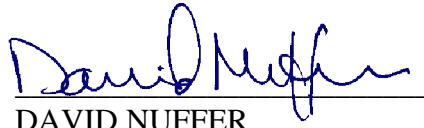
:

THIS MATTER having come before the Court on Defendant's Stipulated Motion to Allow Defendant to Travel, the Court having reviewed the pleadings and being thus informed, and good cause appearing therefore, the Court authorizes Defendant to travel to Arizona. Defendant is allowed to travel out of state during the period of November 24, 2011, to and including November 26, 2011. The time period covers time to travel to Fredonia, Arizona by car and to visit family for the

Thanksgiving Holiday.

DATED this 18th day of November, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>KRISTYNE TRUJILLO, Acting Trustee of the Lavell J. Burt and Elva D. Burt Living Trust,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST, et al.,</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">ORDER FOR STATUS REPORT</p> <p style="text-align:center">Case No. 2:10-CV-1067 TS</p>
---	--


This matter was referred to the Magistrate Judge for a settlement conference. The settlement conference was held on August 3, 2011, and September 14, 2011. The docket indicates that “[t]he parties reached a settlement and will submit a stipulation for the dismissal of the case.”¹ To date, the parties have not submitted a stipulation of dismissal, nor has any other action been taken. The parties are directed to submit a status report to the Court within fourteen (14) days of this Order indicating the status of this case and their intentions to proceed.

SO ORDERED.

¹Docket No. 40.

DATED November 17, 2011.

BY THE COURT:



TED STEWART
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CHRISTINE M. CANEDO, an individual,

Plaintiff,

v.

ALORICA, INC., a California corporation,

Defendant.

**SECOND AMENDED SCHEDULING
ORDER**

Case No.: 2:10-cv-01114-DAK

Judge Dale A. Kimball


Pursuant to the parties' Joint Motion to Amend Scheduling Order, and for good cause shown, the parties' Motion is hereby GRANTED. The Amended Scheduling Order (Doc. 18) is hereby amended as follows:

1. The deadline for fact discovery is extended up to and including December 30, 2011.
2. The deadline for evaluating the case for settlement/ADR purposes is also extended to December 30, 2011.
3. All other dates and deadlines in the Amended Scheduling Order (Doc. 18) and Scheduling Order (Doc. 13) are unchanged.

IT IS SO ORDERED.

Dated: this 17th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style.

Dale A. Kimball
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

EDSON GARDNER, COLLEEN
GARDNER, and LYNDA M. KOZLOWICZ,

Petitioners,

v.

UINTAH COUNTY, UINTAH COUNTY
ATTORNEY, and JOANN STRINGHAM,

Respondents.

Case No. 2:10-CV-1140-SA

**MEMORANDUM DECISION AND
ORDER**

Magistrate Judge Samuel Alba

Before the court is a motion to quash service and to dismiss filed by Respondents Uintah County, Uintah County Attorney, and Joann Stringham. (Doc. 23.) Respondents argue service was ineffective and that this court lacks jurisdiction. Having reviewed the parties' pleadings and having heard oral arguments, the court dismisses this case for lack of subject matter jurisdiction.¹

BACKGROUND

This case arises out of a dispute with Uintah County over a road. (Doc. 1, at 3.) Petitioner Colleen Gardner owns land within the boundaries of the Uintah and Ouray Indian Reservation. (*Id.*; Doc. 40, Official Transcript of November 9, 2011 Hearing ("Tr. __") 9.) Uintah County alleges that Ms.

¹

The court does not address Respondents' motion to quash service because the court dismisses this case for lack of jurisdiction.

Gardner's land has a Uintah County Class 1-B Gravel Road running through it, which roadway is used by her neighbors to access their homes. (Doc. 1, at 12.) Petitioners want to restrict the neighbors' use of that road by erecting a gate across the roadway. (*Id.* at 3-4, 12.) Petitioners brought an action in the Ute Tribal Court challenging Uintah County's law enforcement authority over that roadway. On October 4, 2010, the Ute Tribal Court ruled in Uintah County's favor. (*Id.* at 12-14.)

Petitioners then brought the action in this court on November 17, 2010, by filing a Petition for Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303, in which they have renewed their attack on Uintah County's governmental authority over the road. (Doc. 1.) The parties consented to magistrate judge jurisdiction in August 2011. (Doc. 19.) On August 19, 2011, Respondents filed their motion to quash service and to dismiss. (Doc. 23.) On November 9, 2011, the court held a hearing on all outstanding motions in the case, including the motion to quash and to dismiss. (Docs. 40, 42.)

ANALYSIS

Petitioners' action is brought as a Petition for Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303. (Doc. 1, at 1; Tr. 7-8.) Section 1303 is part of the Indian Civil Rights Act and makes habeas corpus "available to any person, in a court of the United States, to test the legality of his *detention* by order of an Indian tribe." 25 U.S.C. § 1303 (emphasis added); *see also Dry v. CFR Court of Indian Offenses for Choctaw Nation*, 168 F.3d 1207, 1208 n.1 (10th Cir. 1999). The Tenth Circuit has held that Section 1303's "detention" language is analogous to the "in custody" requirement in 28 U.S.C. § 2241. *See Walton v. Tesuque Pueblo*, 443 F.3d 1274, 1279 & 1279 n.1 (10th Cir. 2006); *Dry*, 168 F.3d at 1208 n.1 (citing *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 890-93 (2d Cir.), *cert. denied*, 519 U.S. 1041 (1996)). Therefore, Petitioners must meet the same requirement to show "detention" as that which must be met under 28 U.S.C. § 2241 to show someone is "in custody." In other words, Petitioners must show that they are being restrained or face a severe threat of future restraint for the

court to have subject matter jurisdiction. *See Foster v. Booher*, 296 F.3d 947, 949-51 (10th Cir. 2002). Without making that showing, the court lacks jurisdiction under either 25 U.S.C. § 1303 or 28 U.S.C. § 2241. *See Foster*, 296 F.3d at 949 (explaining that the “in custody” requirement “is jurisdictional”).

Petitioners have not alleged the requisite restraint or potential restraint upon their liberty to vest this court with habeas corpus jurisdiction. *See Walton*, 443 F.3d at 1279 (loss of vendor’s permit not sufficient deprivation of liberty to allow for habeas corpus relief); *Shenandoah v. U.S. Dept. of Interior*, 159 F.3d 708, 713-14 (2nd Cir. 1998) (suspension of employment and restrictions on speech did not support habeas corpus jurisdiction). Rather, Petitioners challenge Uintah County’s governmental authority over a road. (Tr. 17-18.) Petitioners have not shown that they are in custody or under a threat of custody, and thus are not “detained.”

CONCLUSION

Because Petitioners have not shown they are “detained,” Petitioners have not demonstrated that this court has jurisdiction under 25 U.S.C. § 1303. As a result, **IT IS HEREBY ORDERED** that Respondents’ motion to dismiss be **GRANTED** and that this case be **DISMISSED** for lack of subject matter jurisdiction.

DATED this 16th day of November, 2011.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2011 NOV 17 A 9:30

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

ANDREW M. MORSE (4498)
RICHARD A. VAZQUEZ (9128)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendant Scottsdale Insurance Company
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MERIDIAN TITLE OF ST. GEORGE,
INC., DARREL K. BACK and JAMES R.
IVINS,

**ORDER OF DISMISSAL WITH
PREJUDICE**

Plaintiffs,

Case No. 2:10-cv-01254-DB

vs.

Judge Dee Benson

SCOTTSDALE INSURANCE
COMPANY, and DOES I through X,
inclusive,

Defendants.

Based upon the stipulated motion of the parties, and for good cause appearing, all claims in this matter are DISMISSED with prejudice and upon the merits, with each party to bear its own costs and attorneys' fees.

It is SO ORDERED.

11/15/2011

BY THE COURT:



DEE BENSON
US DISTRICT COURT


Hon. Dee Benson
UNITED STATES DISTRICT COURT JUDGE

APPROVED:

SNOW CHRISTENSEN & MARTINEAU

By: /s/Richard A. Vazquez
Andrew M. Morse
Richard A. Vazquez
Attorneys for Defendant

DAY & NANCE

By: /s/James Nance
Steven Day
James Nance
Attorneys for Plaintiffs

(electronically signed with permission of plaintiffs' counsel)

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

STEVEN DAY
JAMES NANCE
COHEN JOHNSON & DAY
1060 WIGWAM PKWY
HENDERSON, NV 89074
(702)309-3333
sday@cohenjohnsonday.com
jnance@cohenjohnsonday.com

/s/ Penny McElmurry
Legal Assistant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA,

Plaintiff,

v.

RAYMOND WILSON, JR.,
BUGMAN PEST AND LAWN, INC.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:

ORDER TO CONTINUE TRIAL

Case No. 2:11-cr-00295

HON. DALE A. KIMBALL

This matter is set for trial on **November 28, 2011**. RAYMOND WILSON, JR is represented by Summer Osburn, BUGMAN PEST AND LAWN, INC is represented by Dennis James, and the UNITED STATES of AMERICA is represented by Karin M. Fojtik and Jared C. Bennett.

IT IS ORDERED: based on the motion to continue filed in this matter by RAYMOND WILSON, JR., and the stipulation by counsel for the UNITED STATES of AMERICA and the stipulation by counsel for BUGMAN PEST AND LAWN, INC, the time between **November 28, 2011** and the new trial date of **January 9, 2012 at 8:30 a.m.**, is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel sufficient time to prepare, and based on the reasons articulated in the motion.

Specifically, the Court FINDS that the additional 42 days are necessary to allow the defense sufficient time to complete review of extensive discovery and to investigate the specific Fumitoxin applications alleged in the Indictment including the interviewing of witnesses and to

allow investigation of specific invoices and training protocols. This additional time is necessary to allow for the defense to diligently investigate the use of this chemical as alleged in this case and it also should afford the parties sufficient time to determine whether expert testimony may be needed and, if so, to obtain any such expert witnesses, allow him/her to investigate, form an opinion, render it, and be ready to testify about it at trial.

Though the charges are misdemeanors, this case presents unique and complex issues related to the proper application of this chemical, and the Court finds that to proceed to trial at this time with an incomplete investigation would cause harm to the defendants' case that outweighs any public interest in a speedy trial pursuant to 18 U.S.C. § 3161(h)(7)(A).

The Court further finds that the defendant is not in custody, and this additional time may allow for the Court to consider his good conduct at time of sentence pursuant to 18 U.S.C. § 3161 (h)(2).

The Court sets the following deadlines:

Motion cut-off: November 28, 2011 at 5:00 p.m.

Expert witness notification: November 25, 2011

Trial: January 9-11, 2012 at 8:30 a.m.

DATED this 18th day of November, 2011.

BY THE COURT

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style.

DALE A. KIMBALL, Senior Judge
United States District Court

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Gerardo Ibarra-Martinez

2011 NOV 17 A 9:30

DISTRICT OF UTAH

JUDGMENT IN A CRIMINAL CASE

BY:

DEPUTY CLERK

Case Number: DUTX 2:11-cr-000424-001

USM Number: 18193-081

Carlos A. Garcia

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Cnt I - Felony Information☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8USC§1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/10/2011

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

11/14/2011

Date

DEFENDANT: Gerardo Ibarra-Martinez
CASE NUMBER: DUTX 2:11-cr-000424-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Gerardo Ibarra-Martinez
CASE NUMBER: DUTX 2:11-cr-000424-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
24 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Gerardo Ibarra-Martinez
CASE NUMBER: DUTX 2:11-cr-000424-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.

DEFENDANT: Gerardo Ibarra-Martinez

CASE NUMBER: DUTX 2:11-cr-000424-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	\$ 100.00	\$	\$
---------------	------------------	-----------	-----------

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------



TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Gerardo Ibarra-Martinez
CASE NUMBER: DUTX 2:11-cr-000424-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

CLAYTON SIMMS (8321)
JESSE M. NIX (13314)
Attorneys for Defendant
Clayton Simms, LLC
39 Exchange Place, Suite 100
Salt Lake City, Utah 84111
Telephone: 801.359.0404
Fax: 801.534.1948

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

UNITED STATES OF AMERICA,	*
Plaintiff	* 2:11-CR-00668 CW
vs.	* * ORDER GRANTING MOTION FOR
	* EXTENSION OF TIME
ERIC HARRY FOX,	*
Defendant	* JUDGE CLARK WADDOUPS

Based upon the motion of the Defendant, and for good cause appearing, therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

That the Defendant, Eric Harry Fox, is granted an extension of time to file pre-trial motions, until November 18, 2011.

~~DATED: November 4, 2011~~

~~/s/ Clayton Simms~~
~~Signature of Attorney~~

Dated this 17th day of November, 2011


Clark Waddoups
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIEGO VILLALVA-SANTOS,

Defendant.

**ORDER GRANTING
MOTION TO EXTEND MOTION
CUT- OFF DATE**

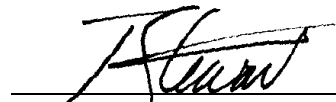
Case No. 2:11 CR 840 TS

Based upon the motion of defendant and good cause appearing;

IT IS HEREBY ORDERED that the pretrial motion deadline in the above case is
extended from November 10, 2011 until December 1, 2011.

DATED this 18th day of November, 2011.

BY THE COURT:



TED STEWART
Chief United States District Court Judge

FILED
U.S. DISTRICT COURT

2011 NOV 18 P 2:56

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

G. FRED METOS - 2250
Attorney for Defendant
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

**IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

COREY OTTLEY et. al,

Defendant.

:

:

:

:

:

**ORDER FOR DISCOVERY
PROCEDURES**

Case No. 2:11 CR 890 - *ew*

Based on motion of the defendant, Makayla Walls, the stipulation of the plaintiff and good cause shown:

It is hereby ORDERED that the distribution of the discovery materials for the above entitled case be handled in the following manner:


1. That Stephanie K. Metos is appointed pursuant to 18 U.S.C. § 3006A as the Discovery Manager for defense counsel in this cases. In that position she is to receive, compile and index all discovery materials and distribute those materials to defense counsel.
2. That the government shall provide copies of all new or additional discovery materials to Ms. Metos who will review the materials, resolve any problems in accessing the

materials that are provided in an electronic format with the United States Attorney's office and distribute the materials to defense counsel.

3. To receive the materials each defense counsel shall provide Ms. Metos with an external computer hard drive, she will download all of the materials received from the government on the hard drives and return them to defense counsel. Ms. Metos will provide information to defense counsel on the size of the hard drive necessary to hold the discovery materials and where such hard drives may be purchased economically.
4. Defense counsel may direct inquiries relating to problems with opening electronic files to Ms. Metos who can attempt to resolve these problems with the attorney. If necessary, Ms. Metos may contact the information technology expert in the United States Attorney's office for assistance in resolving such problems.
5. Inquiries or requests by defense counsel about discovery materials that have not been provided by the government shall be directed to Ms. Metos who may contact the case agent to request that those materials be submitted to the United States Attorney's office for distribution as described above. The case agent shall provide the requested materials to the United States Attorney's office to make any redactions that are necessary. The government shall forward those requested materials to Ms. Metos for distribution to counsel in the manner previously described. Any objections to the dissemination of the requested information shall be made in accordance with the procedures described in paragraph 6 of this order.
6. If such requested materials cannot be provided to defense counsel or if the government objects to the dissemination of the requested materials, the government shall

provide written notice describing either the reasons precluding such distribution or the objections to the distribution to the discovery manager who will forward those objections to defense counsel. Defense counsel may then make any appropriate motions to the court for the production of the requested materials.

DATED this 18th day of November, 2011.



SAMUEL ALBA
United States Magistrate Judge

Approved as to Form and Content.

/s/ Veda Travis

VEDA TRAVIS
Assistant United States Attorney

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV 18 2011

BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	2:11 CR 890 CW
	:	
Plaintiff,	:	ORDER TO WITHDRAW AND RE-
	:	ISSUE ARREST WARRANT AND
vs.	:	ORDER ALLOWING
	:	INTERLINEATION OF
COREY OTTLEY, et. al.	:	INDICTMENT
	:	
Defendants.	:	

Based on a motion by the United States, and for good cause appearing,

IT IS HEREBY ORDERED that the warrant issued in this case under the name of
Bladis Bazoko shall be withdrawn.

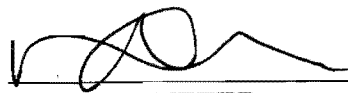
IT IS FURTHER ORDERED that a new warrant shall be issued in the name of
Francis Casildo aka Bladis Bazoko.

IT IS FURTHER ORDERED that the indictment in this case may be amended by
interlineation and shall be interlineated to read "Francis Casildo aka Bladis Bazoko."

IT IS SO ORDERED.

DATED this 18 day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'DAVID NUFFER', written over a horizontal line.

DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:11-CR-947 TS
Plaintiff,	:	
vs.	:	ORDER SETTING DISPOSITION
	:	DATE AND EXCLUDING TIME
GERARDO GONZALEZ-MOREALES,	:	FROM SPEEDY TRIAL
	:	COMPUTATION
Defendant.	:	

This matter came before this Court on 11/18/11 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Benji McMurray . The United States was represented by Assistant United States Attorney Stan Olsen. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

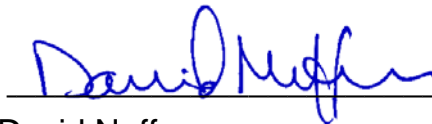
The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **1/12/12 at 3:00 p.m.** before **Judge Ted Stewart**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **11/18/11** (the date of this appearance), and **1/12/12** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 18th day of November, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

for the
District of Utah

2011 NOV 17 P 2:58

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

JORDAN RIVER RESTORATION
NETWORK, a d/b/a of THE SPIRIT OF
UTAH WILDERNESS INC., a Utah non-profit
corporation; JEFF SALT, an individual;
DANNY POTTS, an individual; KRISTINE
VICKERS, an individual; ERIC HARVEY, an
individual; and GAYANNE K. SCHMID, an
individual,

Plaintiffs

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; SACRAMENTO DIVISION,
UTAH REGULATORY OFFICE; COLONEL
WILLIAM J. LEADY, District Engineer of the
Sacramento District; and JASON GIPSON,
Chief of Nevada-Utah Regulatory Branch,

Defendants

and

SALT LAKE CITY CORPORATION,

Intervenor

**ORDER ON MOTION FOR
WITHDRAWAL OF COUNSEL**

Case No. 2:11-cv-00040 DB
District Judge Dee V. Benson

Pursuant to Snell & Wilmer L.L.P.'s ("Counsel") Motion for Withdrawal of Counsel and DUCivR 83-1.4, the Court ORDERS that Counsel may withdraw, and is hereby removed, as counsel for Jordan River Restoration Network, et al. ("Client").

With regard to Client's continued representation, the Court ORDERS as follows:

____ ("Substitute Counsel") has filed a Notice of
Substitution of Counsel and is hereby recognized as counsel for Client in the above-
referenced action.

- X For individual parties: Client or new counsel for Client must file a Notice of
Appearance within twenty-one (21) days after the entry of this order, unless otherwise
ordered by the Court. Pursuant to Utah DUCivR 83-1.3, no corporation, association,
partnership or other artificial entity may appear pro se, but must be represented by an
attorney who is admitted to practice in this court.

X For entity parties: New counsel shall file a Notice of Appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

A party who fails to file a Notice of Substitution of Counsel or Notice of Appearance as set forth above, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

With regard to scheduling, the Court orders as follows:

_____ All litigation dates pursuant to the controlling scheduling order remain in effect.

_____ A scheduling conference is scheduled for _____, ____ at _____.m.

X The action shall be stayed until twenty-one (21) days after entry of this order.

NOTICE TO PARTY

The Court will cause this Order to be sent to Client at the address set forth in the Motion for Withdrawal of Counsel and to all other parties.

DATED this 17th day of November, _____.

BY THE COURT:

Dee Benson

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

PAUL STEPHENSON,	:	Civil No. 2:11-cv-00341
Plaintiff,	:	ORDER
vs.	:	JUDGE DALE KIMBALL
FEDERAL BUREAU OF	:	MAGISTRATE JUDGE BROOKE C.
INVESTIGATION,		WELLS
Defendants.		

On November 2, 2011, this Court issued its Order denying plaintiff's Motion For Entry of Default and granting Mr. Stephenson thirty days in which to amend his complaint and properly serve the defendant.¹ The Court's Order further indicated that failure to do so would result in dismissal of the complaint.²

On November 14, 2011, the Court received what appears to be Mr. Stephenson's amended pro se complaint.³ There is no indication that the amended complaint was served on the defendant. Upon review, the Court finds that the

¹ Document Number 10.

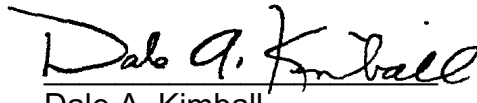
² Id.

³ Document Number 11.

amended complaint fails to state a claim on which relief may be granted. Accordingly, plaintiff's complaint is hereby dismissed pursuant to the provisions of 28 U.S.C. § 1915.⁴

DATED this 18th day of November, 2011.

BY THE COURT:


Dale A. Kimball
United States District Judge

⁴28 U.S.C. § 1915(2)(B)(ii) states: "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that— (B) the action or appeal—(ii) fails to state a claim on which relief may be granted."

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DENNIS R. AND LISA K. LOOMIS,

Plaintiffs,

v.

**MERIDIAS CAPITAL, INC. dba
CRESCENT MORTGAGE; BAC HOME
LOANS SERVICING, LP; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; THE BANK OF NEW
YORK MELLON; RECONTRUST
COMPANY, N.A.; and JOHN
DOES 1 through 10, inclusive,**

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:11-cv-363-PMW

Magistrate Judge Paul M. Warner

All parties in this case have consented to having United States Magistrate Judge Paul M. Warner conduct all proceedings in the case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit.¹ *See* 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. Before the court are (1) Meridias Capital, Inc.’s (“Meridias”) motion to dismiss Dennis R. and Lisa K. Loomis’s (collectively, “Plaintiffs”) amended complaint;² and (2) BAC Home Loans Servicing, LP; Mortgage Electronic Registration Systems, Inc.; The Bank of New York Mellon; and ReconTrust Company, N.A.’s (“ReconTrust”) (collectively, “Defendants”) motion to dismiss

¹ *See* docket nos. 12, 25.

² *See* docket no. 16.

Plaintiffs' amended complaint.³ The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the Rules of Practice for the United States District Court for the District of Utah, the court concludes that oral argument is not necessary and will determine the motions on the basis of the written memoranda. *See* DUCivR 7-1(f).

Meridias and Defendants argue that the majority of the causes of action in Plaintiffs' amended complaint have been repeatedly rejected by courts in this district and that those causes of action rely upon misinterpretations of law. With one exception, which the court will address below, the court agrees. Both Chief Judge Ted Stewart and this court have recently rejected complaints filed by Plaintiffs' counsel, each of which was nearly identical to the complaint presently before the court. *See Pixton v. Citimortgage, Inc.*, No. 2:11-cv-418-PMW, 2011 U.S. Dist. LEXIS 112108 (D. Utah Sept. 29, 2011); *Saccio v. Bank of Am.*, No. 2:11-cv-511-TS, 2011 U.S. Dist. LEXIS 96618 (D. Utah Aug. 29, 2011); *Knudsen v. Countrywide Home Loans, Inc.*, No. 2:11-cv-429-TS, 2011 U.S. Dist. LEXIS 81797 (D. Utah July 26, 2011). With the one exception noted below, the court sees no meaningful distinction between this case and those cases. As demonstrated by Meridias and Defendants in their memoranda, the previous orders of dismissal by courts in this district are founded in well-established law. The court concludes that there is no reason to depart from those prior holdings and that Plaintiffs' claims, with the exception of the claim discussed below, fail as a matter of law.

³ *See* docket no. 18.

The sole claim that survives dismissal is Plaintiffs' fourth cause of action, which alleges that ReconTrust lacks the authority to conduct non-judicial foreclosure sales in Utah. In their motion to dismiss, Defendants argue that ReconTrust may conduct non-judicial foreclose sales in Utah pursuant to 12 U.S.C. § 92a. Defendants further argue that pursuant to the relevant federal statutory provisions, including § 92a, that Texas law applies, rather than Utah law. The court disagrees.

In a recent decision, District Judge Dee Benson adopted the reasoning previously set forth by District Judge Clark Waddoups concerning the precise issue presented by Plaintiffs' fourth cause of action. *See Coleman v. ReconTrust Co, N.A.*, 2:10-cv-1099-DB, docket no. 87 (D. Utah Oct. 3, 2011). This court likewise agrees with the reasoning set forth by Judge Waddoups in *Cox v. ReconTrust Co., N.A.*, No. 2:10-cv-492-CW, 2011 U.S. Dist. LEXIS 22157 (D. Utah March 3, 2011). In *Cox*, Judge Waddoups stated:

Under a straight forward reading of § 92a(b), this court must look to Utah law in its analysis of whether ReconTrust's activities in Utah exceed ReconTrust's trustee powers. The powers granted to ReconTrust under federal law in this case are limited by the powers granted by Utah state law to ReconTrust's competitors. Accordingly, the extent of ReconTrust's federal powers must be determined by reference to the laws of Utah, not by reference to the laws of some other state. Under Utah law, the power to conduct a non-judicial foreclosure is limited to attorneys and title companies. The scope of the powers granted by federal law is limited to the same power Utah statute confers on ReconTrust's Utah competitors. The federal issue, therefore, is whether ReconTrust is a competitor of Utah attorneys or title insurance companies.

Id. at *16-17.

In *Coleman*, after adopting that same reasoning, Judge Benson stated: “Because the parties did not brief the issue of whether ReconTrust competes with Utah attorneys or title insurance companies, the court will not rule on that matter at this time.” *Coleman*, docket no. 87 at 3. Because the parties in this case also have not briefed that issue, the court will not reach it at this time.

In summary, **IT IS HEREBY ORDERED** that:

1. Meridias’s motion to dismiss Plaintiffs’ amended complaint⁴ is **GRANTED**. Plaintiffs’ claims against Meridias are **DISMISSED WITH PREJUDICE**.
2. Defendants’ motion to dismiss Plaintiffs’ amended complaint⁵ is **GRANTED IN PART AND DENIED IN PART**. With the exception of Plaintiffs’ fourth cause of action, which applies only to ReconTrust, Plaintiffs’ claims against Defendants are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

DATED this 18th day of November, 2011.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

⁴ See docket no. 16.

⁵ See docket no. 18.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ZELDON THOMAS MORRIS,)	
)	
Petitioner,)	MEMORANDUM DECISION
)	AND ORDER
v.)	
)	Case No. 2:11-cv-395
UNITED STATES OF AMERICA,)	<i>Related to Case No. 2:09-cr-208</i>
)	
Respondent.)	Judge Clark Waddoups
)	
)	
)	
)	

On April 26, 2011, federal inmate Zeldon Morris (“Morris”) filed a *pro se* motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. Morris has failed to adequately establish entitlement to relief on any of his asserted claims. Accordingly, his motion is denied.

BACKGROUND

Morris was indicted April 8, 2009, under 18 U.S.C. § 1344, for a complex bank fraud scheme. The following day Morris entered a plea of “not guilty.” At a change of plea hearing on December 16, 2009, however, Morris entered a guilty plea as part of a cooperation agreement with the prosecution. In exchange for his plea and full cooperation, the agreement outlined that the government would recommend a three level reduction for the offense under the U.S. Sentencing Guidelines, and recommend to the court that Morris’ sentence be at the low end of

the resultant range. Statement by Defendant in Advance of Plea of Guilty (“Plea”), at 8–9 (Dkt. No. 33 in Case No. 2:09-cr-208 (D. Utah Apr. 28, 2010)).

At the time Morris entered into the cooperation agreement, the government was recommending a final offense level of 24, though this was not mentioned in the plea agreement itself. Shortly before the sentencing hearing, however, the prosecution enhanced the offense level to 26 because of the sophistication of Morris’ fraudulent venture. This increased the guideline range from 51–63 months to a new guideline range of 63–78 months.

On April 27, 2010, the court sentenced Morris to 63 months in federal prison, and ordered him to make over \$1.8 million in restitution to the various financial institutions that fell victim to the fraud. Morris now seeks relief under 28 U.S.C. § 2255 for prosecutorial misconduct, ineffective assistance of counsel, and error under Rule 11 of the Federal Rules of Criminal Procedure.

ANALYSIS

I. STANDARD OF REVIEW

Morris is a *pro se* litigant, and the court must liberally construe his pleadings. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Nevertheless, as petitioner, Morris retains the burden of “alleging sufficient facts on which a recognized legal claim could be based.” *Id.* The court need not accept as true a *pro se* plaintiff’s “conclusory allegations.” *Id.*

II. PROSECUTORIAL MISCONDUCT

Morris claims that prosecutors fraudulently induced him to plead guilty by suggesting he would face a sentence of 51 months, and then later surprised him by enhancing the offense level. Certain statutory enhancements do require written notice to the defendant prior to entry into the

plea agreement.¹ However, the “sophisticated means” enhancement, which is laid out in United States Sentencing Guidelines § 2B1.1(b)(9), includes no such restriction. Morris has not pointed to any law requiring the sentencing guideline enhancement to be disclosed in advance of the plea.

In this case, Morris claims to have received the amended presentence report “on or about April 1, 2010,” leaving him with 27 days before the sentencing hearing to voice any objections. Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“2255 Motion”), Exhibit A at 4 (Dkt. No. 1). During this time, he filed a motion for downward departure based on several factors, including his standing in the community and his family life, and made specific objections to the calculation of his net worth in the presentence report. At no time, however, did Morris or his attorney contest the “sophisticated means” enhancement, or suggest that the prosecution had acted improperly.² The court concludes that Morris has failed to prove prosecutorial misconduct.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

In *Strickland v. Washington*, the Supreme Court held that defendants alleging ineffective assistance of counsel must show that (1) attorney error was so serious that the right to counsel promised the defendant by the Sixth Amendment was effectively denied and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. 668, 694 (1984). There is “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689.

¹ For an example, see 21 U.S.C. § 851(a)(1), which governs increased punishment for defendants in drug-related charges who have prior convictions.

² Additionally, this entire line of argument may now be barred by Morris’ waiver of his rights to challenge his sentence, including under a motion for § 2255 relief. *See* Plea at 5.

See also Cullen v. Pinholster, 131 S. Ct. 1388, 1407 (2011) (“*Strickland* specifically commands that a court must indulge the strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment.”) (Internal quotations, citations, and alterations omitted). Thus, Morris carries the burden to establish any misstep by his attorney was both egregious and prejudicial.³

In the motion before the court, Morris argues that his attorney offered inadequate counsel by failing to advise him that he could withdraw his plea. Morris also states that his counsel wrongfully declined to challenge the amended pre-sentence report or request additional time to evaluate it. Morris believes counsel should have better anticipated the prosecution’s eleventh hour enhancement and warned him against initially entering into the plea. Additionally, Morris’ attorney did not call witnesses to the sentencing hearing, even though the government did, and allegedly lied to Morris in telling him that there were no grounds on which to appeal the sentencing decision. As will be illustrated in turn, none of these decisions by Morris’ attorney rise to the level of ineffective assistance of counsel.

A. Failure to Advise Withdrawal of Guilty Plea

Morris states that, after the enhancement, he would have wanted to withdraw his guilty plea had he been advised that this was legally possible. The Tenth Circuit, applying the *Strickland* test, has held that when a petitioner’s sentence does not violate the terms of his plea agreement, “trial counsel’s failure to advise petitioner of his right to withdraw the plea [does] not constitute ineffective assistance of counsel.” *Lucero v. Kerby*, 7 F.3d 1520, 1522 (10th Cir.

³ Additionally, Morris’ waiver of his rights to challenge his sentence precludes him from raising ineffective assistance of counsel claims except for where “that ineffectiveness claim pertains to the validity of the plea.” *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001). As none of Morris’ claims survive the *Strickland* analysis, however, it does not ultimately matter which of his claims pertain to the validity of the plea itself.

1993). Because no offense level or sentence range was set forth in the cooperation agreement, the enhancement did not violate the terms of Morris' plea. Therefore, counsel had no duty to inform Morris of his ability to withdraw, and failure to do so does not rise to the level of ineffective assistance of counsel.

B. Failure to Contest Sentence Enhancement

By the same token, by not challenging the sentencing enhancement and by not asking for additional time, Morris' counsel did not act ineffectively. These choices by counsel were strategic decisions, which "are due a heavy measure of deference" when challenged by an ineffective assistance of counsel claim. *Cullen*, 131 S. Ct. at 1408 (internal quotations omitted). Indeed, "[f]or counsel's [strategic decisions] to rise to the level of constitutional ineffectiveness, [they] must have been completely unreasonable, not merely wrong, so that they bear no relationship to a possible defense strategy." *Fox v. Ward*, 200 F.3d 1286, 1296 (10th Cir. 2000).

In this case, counsel had rational reasons to make the decisions it did. The agreement, with the reduction in offense level for Morris' plea and cooperation, continued to function on Morris' behalf. Furthermore, because of his cooperation, the prosecution recommended a sentence at the lowest end of the guideline range. Challenges by Morris' attorney may have endangered the agreement, putting Morris at risk for a much longer incarceration. Such challenges would also likely prove futile, as there was no factual basis from which to argue that the bank fraud scheme did not employ "sophisticated means." These claims of Morris do not satisfy the *Strickland* test.

C. Failure to Foresee Sentence Enhancement and Warn Against Plea

Morris also castigates his lawyer, who formerly served as an Assistant United States Attorney, for not anticipating that prosecutors would suggest an offense level enhancement for

the sophistication of the bank fraud scheme. Morris believes he should have been warned about this possibility before entering into the cooperative agreement. Counsel, however, is not required to correctly predict the future in order to be constitutionally adequate. Also, awareness of the possible enhancement would not have significantly changed the options available to Morris, and thus any failure by counsel to inform Morris of them did not greatly affect the result of the proceedings. As these alleged shortcomings were neither gravely unreasonable nor outcome determinative, they do not approach the standard necessary to establish ineffective assistance of counsel. *See Strickland*, 466 U.S. at 694.

D. Use of Witnesses at Sentencing Hearing

In addition, Morris disagrees with his attorney's choice not to call character witnesses to the sentencing hearing, as well as the way his attorney attended to the governments' witnesses. In his motion, Morris expresses hope that a different handling of the witnesses would have led to a final sentence below the minimum suggested by the sentencing guidelines. These allegations of ineffective counsel, however, rest on strategic decisions made by the attorney, who must balance the helpfulness of information against time constraints and the demands of judicial economy. "Because advocacy is an art and not a science, and because the adversary system requires deference to counsel's informed decisions, strategic choices must be respected" when they fall within the bounds of reasonable professional judgment, as this decision did. *Id.* at 681.

E. Failure to be Advised of Ability to Appeal

Morris also complains that counsel told him he could not appeal the sentence. Morris' ability to appeal was severely curtailed by the conditions of his agreement with the prosecution, in which he waived all rights of appeal unless his imposed sentence was above the statutory maximum penalty or the high-end of the sentencing guideline range established in the final

presentence report.⁴ Plea at 5. Because Morris' sentence was well below the 30 year statutory maximum, *see* 18 U.S.C. § 1344, and at the lowest end of the sentencing guideline range, no exception to the waiver applies.

Outside of exceptions listed in the waiver itself, an appeal may only be brought, despite a waiver, if the defendant can establish the waiver of his rights was not knowing and voluntary or that a serious miscarriage of justice, such as impermissible racial animus on the part of the court, occurred. *Hahn*, 359 F.3d at 1325–28. The waiver makes the defendant generally unable to appeal circumstances which do not render the plea agreement unknowing or involuntary, as well as events which occur after the plea agreement is entered into. *Id.* at 1326–27.

Morris claims he desired to bring appeals on grounds of “(i) ineffective counsel, (ii) . . . involuntary/unknowing plea agreement (iii) . . . appealable Rule 11 violations . . . and (iv) that the ‘sophisticated means’ enhancement was unconstitutional as being vague.” 2255 Motion, Exhibit A at 6 (Dkt. 1). None of these bases for appeal contain much merit. In each instance, the defendant would bear a difficult burden of proof and face a mountain of adverse precedent. Such appeals border on frivolous, and it was not grossly unreasonable or outcome determinative for Morris' counsel to suggest that no grounds for appeal were available.

In sum, though Morris has advanced many instances where he wishes his counsel had acted differently, at no point was he left without the competent representation guaranteed him by the Constitution. There are, after all, “countless ways to provide effective assistance in any given case.” *Strickland*, 466 U.S. at 689. Furthermore, Morris has not shown that any potential

⁴ The court is aware that such waivers do not bar all appeals on the basis of ineffective assistance of counsel. (*See United States v. Hahn*, 359 F.3d 1315, 1327 (10th Cir. 2004). *But see id.* n. 15 (“[W]ith rare exception, a defendant must raise ineffective assistance of counsel claims in a collateral proceeding, not on direct appeal.”) (internal quotations, citations, and alterations omitted)). This does not mean, however, that a petitioner may succeed on a claim of ineffective assistance of counsel merely because counsel failed to bring an appeal on his behalf.

missteps influenced the eventual outcome of the proceedings. None of Morris' complaints satisfy the *Strickland* test, and he has no claim for ineffective assistance of counsel.

IV. RULE 11 VIOLATION

Finally, Morris attests that the trial court violated Rule 11 of the Federal Rules of Criminal Procedure ("Rule 11") at his sentencing hearing. He explains that the court did not ask him whether he still desired to maintain his guilty plea and waive his rights to trial despite the amendments made to the sentencing recommendations. Furthermore, Morris states the court did not fully inform him at the sentencing hearing of his rights to appeal the sentence.

Rule 11 "is designed to assist the district judge in making the constitutionally required determination that a defendant's guilty plea is truly voluntary." *United States v. Weeks*, 653 F.3d 1188, 1198 (10th Cir. 2011) (quoting *McCarthy v. United States*, 394 U.S. 459, 465 (1969)). It is meant to "ensure the accuracy of the plea through some evidence that a defendant actually committed the offense." *United States v. Keiswetter*, 860 F.2d 992, 995 (10th Cir. 1998). The rule requires the court, before accepting a guilty plea, to discuss with the defendant "personally in open court" the charges to which the defendant is pleading, the maximum possible penalties the defendant may face, and the fact that the defendant is waiving his right to a jury trial. Fed. R. Crim. P. 11(b)(1). Additionally, "the court must . . . determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement)." Fed. R. Crim. P. 11(b)(2).

The court complied with Rule 11 at Defendant's change of plea hearing. During that hearing, the court asked Morris over seventy questions about his understanding of the plea agreement. Morris' answers all indicated that he understood the charges against him, knew the potential sentence he was facing, and that he was waiving his rights to a jury trial as well as his

rights to appeal the sentence. Specifically, Morris responded that he understood “that the sentence the Court ultimately imposes may be different than any estimate [he] had received from [his] attorney.” Transcript of Change of Plea Hearing, at 12, Case No. 2:09-cr-208 (D. Utah Dec. 16, 2009). He also stated he knew he was “giving up the right to challenge by appeal or by collateral attack the sentence imposed by this Court.” *Id.*

Indeed, Morris is not complaining that the court allowed him to enter into a guilty plea involuntarily or that he did not commit the criminal acts. Rather, Morris wishes that the court would have reaffirmed at the *sentencing hearing* that he desired to maintain his guilty plea. Rule 11 does not impose such an obligation upon the court, nor do any of the other Federal Rules of Criminal Procedure.

Morris is also unhappy that the court did not inform him, at the sentencing hearing, that he had the right to appeal his sentence. As discussed above, however, any rights which Morris maintained in the face of his waiver were extremely limited. Furthermore, while Rule 11 requires the court to insure the defendant understands he is waiving his rights to appeal before accepting his guilty plea, Fed. R. Crim. P. 11(b)(1)(N), it does not require the court to discuss appellate rights with the defendant at sentencing.

At his sentencing hearing, the court discussed the two-level sentence enhancement for the sophisticated means of Morris’ fraud, and neither he nor his lawyer raised any objection. Transcript of Sentencing Hearing, at 4, Case No. 2:09-cr-208 (D. Utah Apr. 27, 2010). Instead, Morris indicated he was “willing to accept whatever punishment the court [imposed].” *Id.* at 88.

Morris has clearly not met his burden under 28 U.S.C. § 2255. Under this statute, “the appropriate inquiry [is] whether the claimed error of law was a fundamental defect which inherently results in a complete miscarriage of justice and whether it presents exceptional

circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.” *Davis v. United States*, 417 U.S. 333, 364 (1974) (internal quotations, citations, and alterations omitted). Though the court must ensure the defendant is not forced into accepting a plea agreement, it has no obligation to elaborate upon the agreement at a later date. The court is under no obligation to repeat the Rule 11 colloquy at the sentencing hearing, and its election not to do so cannot reasonably be construed as “a complete miscarriage of justice.” *Id.*

Furthermore, Morris’ agreement with the prosecution provided that he waived all rights to challenge his “sentence, and the manner in which the sentence is determined, in any collateral review motion, writ, or other procedure, including . . . a motion brought under 28 U.S.C. § 2255.” Plea at 5. Even if Morris could allege facts suggesting a compelling need for a § 2255 remedy, he has almost entirely bargained away his rights to contest what occurred at his sentencing hearing.

CONCLUSION

For the reasons set forth above, Morris’ Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is DENIED. The court denies all relief that Morris seeks, and this case is now closed.

SO ORDERED this 18th day of November, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Clark Waddoups", is written over a horizontal line.

Clark Waddoups
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT

2011 NOV 17 P 2:58

Cao Group, Inc.,
Plaintiff

DISTRICT OF UTAH

v.

: ORDER FOR PRO HAC VICE ADMISSION


DEPUTY CLERK

GE Lighting, Inc., et al.
Defendant

: Case Number: 2:11-cv-00426-PMW

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Gary W. Smith in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 17 day of Nov, 2011.



U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HUMBLE FINSAND,

Plaintiff,

v.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION;
ROUNDPOINT MORTGAGE
SERVICING CORPORATION; et al.,

Defendants.

MEMORANDUM DECISION
AND ORDER

Case No. 2:11-cv-440-PMW

Magistrate Judge Paul M. Warner

All parties in this case have consented to having United States Magistrate Judge Paul M. Warner conduct all proceedings in the case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit.¹ *See* 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. Before the court is Taylor, Bean & Whitaker Corporation and Roundpoint Mortgage Servicing Corporation's (collectively, "Defendants") motion to dismiss.² The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the Rules of Practice for the United States District Court for the District of Utah, the court concludes

¹ *See* docket no. 9.

² *See* docket no. 12.

that oral argument is not necessary and will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(f).

Defendants argue that the causes of action in Humble Finsand's ("Plaintiff") complaint have been repeatedly rejected by courts in this district and that those causes of action rely upon misinterpretations of law. The court agrees. Both Chief Judge Ted Stewart and this court have recently rejected complaints filed by Plaintiff's counsel that contain the same claims in the complaint presently before the court. *See Pixton v. Citimortgage, Inc.*, No. 2:11-cv-418-PMW, 2011 U.S. Dist. LEXIS 112108 (D. Utah Sept. 29, 2011); *Saccio v. Bank of Am.*, No. 2:11-cv-511-TS, 2011 U.S. Dist. LEXIS 96618 (D. Utah Aug. 29, 2011); *Knudsen v. Countrywide Home Loans, Inc.*, No. 2:11-cv-429-TS, 2011 U.S. Dist. LEXIS 81797 (D. Utah July 26, 2011). The court sees no meaningful distinction between this case and those cases. As demonstrated by Defendants in their memoranda, the previous orders of dismissal by courts in this district are founded in well-established law. The court concludes that there is no reason to depart from those prior holdings and that this case fails as a matter of law.

Plaintiff has failed to plead claims upon which relief can be granted. Accordingly, **IT IS HEREBY ORDERED** that Defendants' motion to dismiss³ is **GRANTED**, and Plaintiff's

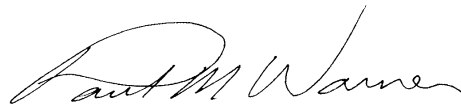
³ *See id.*

complaint is **DISMISSED WITH PREJUDICE**. The Clerk of the Court is directed to close this case forthwith.

IT IS SO ORDERED.

DATED this 18th day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

N. THOMAS HEATON, Plaintiff, vs. AMERICAN BROKERS CONDUIT, et al., Defendants.	MEMORANDUM DECISION AND ORDER ON PLAINTIFF’S MOTION TO SET ASIDE Case No. 2:11-CV-531 TS
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This matter is before the Court on Plaintiff’s Motion to Set Aside Order.¹ For the reasons discussed below, the Court will deny Plaintiff’s Motion.

On September 2, 2011, a Clerk’s Judgement was filed in favor of Defendants America's Wholesale Lender, American Brokers Conduit, American Home Mortgage Servicing, Inc., Backman Title Services, Bank of America N.A., Mortgage Electronic Registration Systems, and ReconTrust Company, N.A. against Plaintiff N. Thomas Heaton. On September 20, 2011, Plaintiff filed a Motion to Set Aside that Judgment under Fed.R.Civ.P. 59(e) and 60(b).

¹Docket No. 28.

“[A] motion to reconsider filed within [28] days after entry of judgment is considered a Fed.R.Civ.P. 59(e) motion.”² In this case, Plaintiff filed his Motion to Set Aside eighteen days after the entry of judgment. The Court will therefore consider this Motion under Rule 59(e).

The Tenth Circuit has recognized the following grounds which warrant a motion to reconsider under Rule 59(e): “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.”³ “Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”⁴ As Plaintiff has not alleged any grounds adequate for this Court to reconsider the judgment under Rule 59(e), the Court will deny the Motion.

It is therefore

ORDERED that Plaintiff’s Motion to Set Aside (Docket No. 28) is DENIED.

DATED November 18, 2011.

BY THE COURT:



TED STEWART
United States District Judge

²*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2005) (second alteration to reflect change in Rule 59).

³*Id.* (citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir.1995)).

⁴*Id.*

Submitted by:

Patricia W. Christensen (0645)
Matthew J. Ball (9414)
R. Jeremy Adamson (12818)
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**IN THE UNITED STATES DISTRICT COURT
THE DISTRICT OF UTAH, CENTRAL DIVISION**

PRIMOS, INC., a Mississippi corporation,

Plaintiff,

vs.

JAMES HAMPTON, an individual,

Defendant.

**ORDER FOR PRO HAC VICE
ADMISSION**

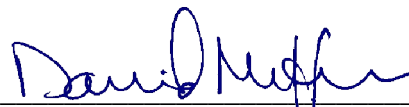
Case No. 2:11-cv-00645-DN

Magistrate Judge David Nuffer

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of D.U. Civ. R 83-1.1(d), the motion for the admission *pro hac vice* of Barry C. Kane, to the United States District Court, District of Utah, in the subject case is GRANTED.

Entered this 18th day of November 2011.

By the Court:



U.S. Magistrate Judge

Thomas M. Melton (Utah State Bar No. 4999)
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Daniel Wadley (Utah State Bar No. 10358)
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FILED
U.S. DISTRICT COURT

2011 NOV 18 P 4:34

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

Civil No. 2:11-cv-798

PLAINTIFF,

Judge Jenkins

v.

**ORDER APPOINTING
INTERIM TRANSFER
AGENT**

NATIONAL STOCK TRANSFER, a Utah corporation,
KAY BERENSON-GALSTER and ROGER GREER,

DEFENDANTS.

WHEREAS this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission ("SEC", "Commission" or "Plaintiff") to appoint an interim transfer agent in the above-captioned action; and,

WHEREAS the Court finds that, based on the record in these proceedings, the appointment of an interim transfer agent in this action is necessary and appropriate for the purposes of effecting the timely and proper transfer of securities, the return of records to issuers or successor transfer agents and the destruction of records in accordance with the federal transfer agent rules and regulations; and,

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Until further Order of this Court, Standard Registrar and Transfer Company is hereby appointed to serve without bond as Interim Transfer Agent (the "Agent") for issuers who have currently designated National Stock Transfer, Inc. ("National").

2. Defendants Kay Berenson-Galster and Roger Greer, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any assets, in the form of records, documents, share certificate or other instruments of National currently held by them or under their control, whether held in the name of National, or for its direct or indirect beneficial interest wherever situated, and directing any other person or entity holding such properties of National, hold or retain within their control and prohibit the withdrawal, removal, transfer, or other disposal of any such assets, funds, or other properties. The sole exception to this provision shall be the transfer of records, files, stock certificates or any other documents to the Agent.

3. The Agent shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of National under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a transfer agent by

the provisions of 15 U.S.C. § 78qA, et seq. and the regulations promulgated thereunder.

4. The Agent shall assume and control the operation of National and shall pursue and preserve all of its claims.

5. Subject to the specific provisions below, the Agent shall have the following general powers and duties:

- A. To carry out National's duties and responsibilities as a registered transfer agent.
- B. To take custody, control and possession of all National Property and records relevant to the operation of National's transfer agency duties and responsibilities; to sue for and collect, recover, receive and take into possession from third parties all of National's records;
- C. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of National with respect to National's records and transfer agent duties and responsibilities;
- D. To take such action as necessary and appropriate for the preservation of National property or to prevent the dissipation or concealment of National property;
- E. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Agent deems necessary or appropriate in discharging his or her duties as Agent;
- F. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against National; and,
- G. To take such other action as may be approved by this Court.

6. Kay Berenson-Galster and Roger Greer and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of National, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Agent forthwith all paper and

electronic information of, and/or relating to National, such information shall include but not be limited to books, records, documents, stock certificates, accounts and all other instruments and papers.

7. Kay Berenson-Galster and Roger Greer are required to assist the Agent in fulfilling his or her duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Agent.

8. Kay Berenson-Galster and Roger Greer, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of National, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records or accounts of National are hereby directed to deliver the same to the Agent, his or her agents and/or employees.

9. The Agent is authorized to take immediate possession of all personal property of National, wherever located, including but not limited to, electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records.

10. The Agent is authorized to have immediate access to all real property of National, wherever located, including but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement or regulatory officials acting within the course and scope of their official duties, are (without the express written permission of the Agent) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

11. The Agent is authorized to open all mail directed to or received by or at the offices or post office boxes of National, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

12. The Agent is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of National (the "Agent's Mail"), including all mail addressed to, or for the benefit of National. The Postmaster shall not comply with, and shall immediately report to the Agent, any change of address or other instruction given by anyone other than the Agent concerning the Agent's Mail. Kay Berenson-Galster and Roger Greer shall not open any of the Agent's Mail and shall immediately turn over such mail, regardless of when received, to the Agent. All personal mail of Kay Berenson-Galster and Roger Greer, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Agent, shall be released to the named addressee by the Agent. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by National. Kay Berenson-Galster and Roger Greer shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

13. The Agent shall promptly give notice of his or her appointment to all known officers, directors, agents, employees, shareholders and managers of National as the Agent deems necessary or advisable to effectuate the operation of National and to all issuers for whom National acts as transfer agent. The Agent shall also give notice of this appointment to the Depository Trust & Clearing Corporation ("DTCC") and inform DTCC that Agent has been appointed the Interim Transfer Agent for all issuers for whom National acted as transfer agent and that National is no longer the transfer agent of record for those issuers.

14. All persons and entities owing any obligation or debt to National incurred after the date of this Order, shall pay all such obligations in accordance with the terms thereof to the Agent and its receipt for such payments shall have the same force and effect as if National had received such payment.

15. In furtherance of his or her responsibilities in this matter, the Agent is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he or she deems appropriate to inform them of the status of this matter and/or the financial condition of National. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Agent or the SEC.

16. Kay Berenson-Galster and Roger Greer, and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Agent, which would:

- A. Interfere with the Agent's efforts to take control, possession, or management of any National property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any National property;
- B. Hinder, obstruct or otherwise interfere with the Agent in the performance of his or her duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information, withholding access information such as passwords, access cards or other necessary information;
- C. Dissipate or otherwise diminish the value of any National property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any National property, enforcing judgments, assessments or claims against any National property, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Kay Berenson-Galster and Roger Greer or which otherwise affects any National property; or,
- D. Interfere with or harass the Agent, or interfere in any manner with the exclusive jurisdiction of this Court over National and its ongoing operations.

17. Kay Berenson-Galster and Roger Greer shall cooperate with and assist the Agent in the performance of his or her duties as requested by the Agent.

18. The Agent shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

19. Until further Order of this Court, the Agent shall not be required to post bond or give an undertaking of any type in connection with his or her fiduciary obligations in this matter.

20. The Agent and his or her agents, acting within scope of such agency are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Agent be liable to anyone for his or her good faith compliance with the duties and responsibilities as Agent nor shall the Agent be liable to anyone for any actions taken or omitted by him or her except upon a finding by this Court that he or she acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

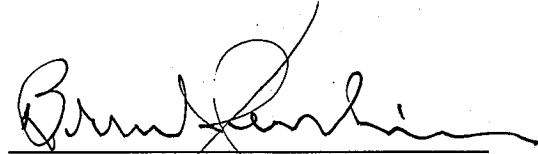
21. This Court shall retain jurisdiction over any action filed against the Agent based upon acts or omissions committed in his or her representative capacities.

22. In the event the Agent decides to resign, the Agent shall first give written notice to the Commission's counsel of record and to the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Agent shall then follow such instructions as the Court may provide.

23. The Agent shall certify, in writing, efforts to achieve the undertakings set forth in this Order within sixty (60) days of its entry. The certification shall be delivered to Commission counsel and filed with the Court. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative and be supported by exhibits sufficient to demonstrate the compliance efforts.

24. On the request of the Commission, the Agent shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

IT IS SO ORDERED, this 18th day of November, 2011.


UNITED STATES DISTRICT
JUDGE

FILED
U.S. DISTRICT COURT

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

FRANCES M. FLOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

Civil Case No. 2:11-CV-960

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. § 2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court ORDERS the United States Attorney to respond to the motion within sixty (60) days of the date of this Order.

IT IS SO ORDERED.

DATED this 14th day of November, 2011.



Dee Benson
United States District Judge

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Attorneys for Plaintiff

**IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

J. DAVID McGEE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZIONS BANCORPORATION, a Utah
corporation; ZIONS FIRST NATIONAL
BANK, a federally chartered bank.

Defendants.

**ORDER GRANTING *PRO HAC VICE*
ADMISSION OF KARIN B. SWOPE**

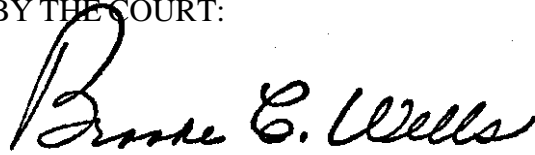
Case No. 2:11-cv-01057-BCW

Magistrate Judge Brooke C. Wells

It appearing to the Court that Karin B. Swope meets the *pro hac vice* admission requirements of DUCiv R. 83-1.1(d), the motion for the admission *pro hac vice* of Karin B. Swope in the United States District Court, District of Utah in the subject case is GRANTED.

this 17th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, looping initial "B".

MAGISTRATE JUDGE BROOKE C. WELLS
Federal Magistrate Judge

ANDERSON & KARRENBERG

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Attorneys for Plaintiff

**IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

J. DAVID McGEE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZIONS BANCORPORATION, a Utah
corporation; ZIONS FIRST NATIONAL
BANK, a federally chartered bank.

Defendants.

**ORDER GRANTING *PRO HAC VICE*
ADMISSION OF MARK A. GRIFFIN**

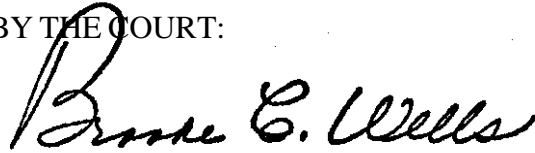
Case No. 2:11-CV-01057-bcw

Magistrate Judge Brooke C. Wells

It appearing to the Court that Mark A. Griffin meets the *pro hac vice* admission requirements of DUCiv R. 83-1.1(d), the motion for the admission *pro hac vice* of Mark A. Griffin in the United States District Court, District of Utah in the subject case is GRANTED.

this 17th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, stylized initial 'B'.

MAGISTRATE JUDGE BROOKE C. WELLS
District Court Judge

James C. Lewis (USB #1943)
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BILLY JOE YOUNG, et al.,	:	
	:	
Plaintiffs,	:	
vs.	:	
	:	
ADVANCED SPINE FIXATION SYSTEMS,	:	Case No. 2:98-CV-00390
INC., et al.,	:	
	:	
Defendants.	:	

ORDER OF DISMISSAL

Considering Plaintiff Ellen Louise Baker's Motion to Dismiss:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all claims of Plaintiff Ellen Louise Baker against Defendant Advanced Spine Fixation Systems, Inc., and all remaining Defendants, be and the same are hereby dismissed, with prejudice, with each party to bear its own costs.

DATED this 17th day of November, 2011.


UNITED STATES DISTRICT COURT JUDGE